

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
05 OCT 17 PM 2:50

DEPARTMENT: Development & Infrastructure Services

AGENDA DATE: October 25, 2005

CONTACT PERSON/PHONE: Patricia D. Adauto, Deputy City Manager for
Development & Infrastructure Services.

DISTRICT AFFECTED: 7

SUBJECT:

Item is to request APPROVAL of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a purchase of private property consisting of undeveloped land to be used as right of way for the *Indian Place Street & Drainage Improvement Project*.

BACKGROUND / DISCUSSION:

Project consists of street & drainage improvements on Indian Place from San Jose Road to Forest Haven Court.

The subject parcel is to be utilized as a storm water retention pond.

PRIOR COUNCIL ACTION:

Council has not previously considered any right-of-way purchases related to this project.

AMOUNT AND SOURCE OF FUNDING:

This item is funded through general obligation bonds approved by the voters as part of the February 2004 Bond election. No budgetary adjustments are necessary. Funding source is as follows:

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PBE04ST112	29127	14200403	508000

BOARD / COMMISSION ACTION:

(N/A)

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Contract of Sale by and between the **CITY OF EL PASO** and **CATHOLIC PROPERTIES OF EL PASO**, for the acquisition a .66 acre tract of land being a portion of Tract 4B2A, Block 12, Ysleta Grant, El Paso, El Paso County, Texas, in the amount of THIRTEEN THOUSAND AND NO/100 DOLLARS (\$13,000.00) to be used for the Indian Place Street & Drainage Improvement Project, District No. 7.

ADOPTED THIS ____ DAY OF _____, 2005.


THE CITY OF EL PASO:

John F. Cook, Mayor

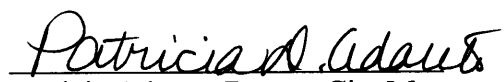
ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:


Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:


Patricia A. Adauto, Deputy City Manager
Development & Infrastructure Services

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

THIS Agreement is entered into this _____ day of _____ 2005, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City", and **CATHOLIC PROPERTIES OF EL PASO**, a Texas non-profit corporation, hereinafter referred to as "Seller".

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following described real property:

Parcel 1--a .6612 acre parcel, more or less, being a portion of Tract 4B2A, Block 12, Ysleta Grant, El Paso, El Paso County, Texas, and more particularly described in Exhibit "A" which is attached hereto and made a part hereof for all purposes.

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property".

2. Amount of Payment of Purchase Price. The purchase price for the Property will be THIRTEEN THOUSAND AND NO/100THS (\$13,000.00)

2.1 Payment of Sales Price. The full amount of the sales price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1 Title Insurance. Within thirty (30) working days after the date of execution of this contract, the City at its expense will order a title commitment ("commitment"), accompanied by copies of all recorded documents affecting the property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.2 Title Objections. The City will give the Seller written notice on or before the expiration of ten (10) working days after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. Seller may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents and warrants to the City that to the best of its knowledge, as follows:

4.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. The Seller warrants that no person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the Seller's best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the Seller, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

4.4 Litigation. To the best knowledge of the Seller, there is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or property.

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance Law. To the best of the Seller's knowledge, all laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property, have been complied with.

4.7 Taxes. To the best of the Seller's knowledge, no state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment.

4.8 Pre-Closing Claims. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

4.9 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and marketable title to an indefeasible fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the City.

4.12 Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document, or (iii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Seller made in this document shall survive the execution and delivery hereof and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Stewart Title of El Paso, 6601 Montana Ave., Suite H, El Paso, Texas 79925.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing.

5.2 Real Property Taxes. Real property taxes and assessments shall be prorated at Closing, effective as of the date of Closing, based upon the latest tax bill available. Taxes shall be prorated

in accordance with the foregoing provision and the parties shall appropriately and promptly adjust such pro-rations on the basis of the correct, applicable tax bill when such tax bill becomes available. Seller will pay ad valorem taxes through the date of Closing.

5.3 Closing Costs.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property City shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Escrow fees, if any, shall be paid by the City.

5.4 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

5.5 Other Obligations. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. Default.

6.1 Breach by Seller. In the event that Seller shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.2 Breach by City. In the event that City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Seller's actual damages as a result of such breach by City, Seller shall have a right to receive the \$100.00, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as Seller's sole, exclusive remedy hereunder in such event.

7. Miscellaneous.

7.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Seller: Catholic Properties of El Paso
499 St. Matthews Street
El Paso, Texas 79907

City: Pat D. Adaudo
Deputy City Manager for
Development & Infrastructure Services
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

8. Entire Agreement/Governing Law. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 Time. Time is of the essence of this Agreement and each and every provision hereof.

8.2 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City is hereby advised that it should be furnished with

or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller this 17th day of October, 2005.

CATHOLIC PROPERTIES OF EL PASO

By + Armando K. Ochoa
Name Bishop Armando Ochoa
Its _____

EXECUTED by the City this th day of October, 2005.

CITY OF EL PASO, a Municipal Corporation

By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

Patricia D. Adauto
Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

APPROVED AS TO FORM:

Theresa Cullen Garney
Theresa Cullen Garney
Deputy City Attorney

CLAUSEN LAND SURVEYING

GPS ~ Topographic ~ Boundary ~ Geodetic Control ~ Construction ~ CAD Mapping

414 Executive Center Boulevard, Suite 106

El Paso, TX 79902

Phone: (915) 546-9928

METES AND BOUNDS DESCRIPTION

A 0.6612 acre parcel for a proposed ponding area located in a portion of Tract 4B2A, Block 12, Ysleta Grant, El Paso County, Texas, as conveyed to the Saint Margaret's Orphanage, as recorded in Volume 3188, Page 1195, Deed Records, El Paso County, Texas, and being more particularly described by metes and bounds as follows.

COMMENCING for reference at an existing 1/2" rebar lying at the southwest corner of Lot 6, Block 14, Marian Manor Subdivision, as recorded in the Plat Records, El Paso County, Texas, and the easterly right-of-way line of Indian Place (60.00 feet wide) and the northerly right-of-way line of the Juan D. Herrera Lateral (60.00 feet wide); **WHENCE**, an existing 1/2" rebar with cap stamped "TX4297" lying at the common corner of said Lot 6 and Lot 7, Block 14, Marian Manor Subdivision and said easterly right-of-way line bears North 13°25'00" East, with said easterly right-of-way line, a distance of 72.00 feet; **THENCE**, North 88°30'00" West, with said northerly right-of-way line, a distance of 30.66 feet to a point; **THENCE**, North 13°25'00" East a distance of 605.34 feet to the centerline intersection of said Indian Place and Forest Haven Court (50.00 feet wide); **THENCE**, North 13°25'00" East, leaving said centerline intersection, a distance of 25.00 feet to a point lying in the northerly right-of-way line of said Forest Haven Court; **THENCE**, North 76°35'00" West, with said northerly right-of-way line, a distance of 30.00 feet to a 5/8" rebar with cap stamped "TX5511 NM16467 AZ36621" set at the northeast corner of Tract 4B2F, Block 12, Ysleta Grant, El Paso County, Texas, as conveyed to Ysleta Independent School District, for a corner of this parcel and the **POINT OF BEGINNING** of this parcel description;

THENCE, North 13°25'00" East a distance of 180.00 feet to a 5/8" rebar with cap stamped "TX5511 NM16467 AZ36621" set for a corner of this parcel;

THENCE, South 76°35'00" East a distance of 160.00 feet to a 5/8" rebar with cap stamped "TX5511 NM16467 AZ36621" set in the westerly boundary line of Marian Manor Subdivision, as recorded in the Plat Records, El Paso County, Texas, for a corner of this parcel;

THENCE, South 13°25'00" West, with said westerly boundary line, a distance of 180.00 feet to a 5/8" rebar with cap stamped "TX5511 NM16467 AZ36621" set in the northerly right-of-way line of said Forest Haven Court, for a corner of this parcel;

THENCE, North 76°35'00" West, with said northerly right-of-way line, a distance of 160.00 feet to the **TRUE POINT OF BEGINNING**.

Said Parcel contains 0.6612 acres (28,800 square feet) more or less.

Basis of bearing is record as per Marian Manor Subdivision, as recorded in Plat Records, El Paso County, Texas.

CLAUSEN LAND SURVEYING



Christian A. Clausen, R.P.L.S.

Texas License No. 5511

Date: December 8, 2004



Christian A. Clausen, R.P.L.S. (TX, NM, AZ), Owner
Mobile: (915) 355-9482 surveyorclausen@elp.rr.com

Exhibit "A"

Title Co: n/a	File #: n/a	Dated: n/a
FIRM zone: n/a	Panel Number: n/a	Dated: n/a
Date of Survey: 00-00-04	Scale: 1' = 40'	Office: E.R.
		Field: XX
A portion of Tract 4B2A, Block 12, Ysleta Grant, City of El Paso, El Paso County, Texas.		Plat Record Vol. Pg.
		Sht. 1 of 2